

for the protection plan, if the retailer closed or otherwise became unavailable to replace the furniture. Plaintiffs argue that the inclusion and enforcement of the provision violated New York law. Plaintiffs claim a right to relief under GBL § 349, New York's prohibition against Deceptive Acts and Practices and claim that Valspar's actions constituted a breach of what Plaintiffs claim a proper contract should have included as its terms.

II. Procedural Status.

Valspar has moved to dismiss on the grounds that there is no private right of action for Plaintiffs' GBL § 395-a claims, that neither GBL § 349 nor contract law can be used for an end-run around the lack of a private right of action, and that Plaintiffs' allegations fail to satisfy the other requirements for a GBL § 349 or contract claim. The parties exchanged letters in accordance with court rules, and pursuant to court order are now briefing the motion to dismiss. Briefing was initially scheduled for completion on October 28, 2010, but was extended by agreement and Court order at Plaintiffs' counsel's request. The briefing will now be complete on November 8, 2010.

III. Joint request to defer setting discovery schedule for approximately 30 days.

The parties met and conferred telephonically, pursuant to the Court's June 24, 2010 Order and the requirements of Rule 26(f), and are in the process of exchanging Rule 26(a) disclosures and other information by agreement. The parties have reached agreement regarding the form of ESI disclosure and discovery, and reached an agreement in principle on a claw-back arrangement and the need for an appropriate protective order for confidential materials.

Because the resolution of the pending motion may materially affect the scope of any discovery or further motions, the parties respectfully and jointly request that the Court defer the setting of deadlines for discovery and motions for approximately 30 days. The parties therefore

propose that the October 25, 2010 status conference be deferred, with the parties to submit a further joint status report in 28 days, with the parties to appear for an initial scheduling conference on December 2, 3 or 6, 2010, if the Court approves such an approach.

Respectfully submitted,

s/ Daniel A. Edelman
Daniel A. Edelman (PHV)
Attorney for Plaintiff

s/ Paula Morency (with consent)
Paula Morency (PHV)
Attorney for Defendant

Daniel A. Edelman (PHV)
Cathleen M. Combs (PHV)
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
Chicago, IL 60606
120 S. LaSalle Street, 18th Floor
Chicago, Illinois 60603
312-739-4200
Fax: 312-419-0379
Email: courtecl@edcombs.com

Paula Morency (PHV)
Jeannice D. Williams (PHV)
David Elliot Jacoby
Schiff Hardin LLP
233 S. Wacker Drive, Suite 6600
312-258-5500
FAX: 312-258-5600
Email: pmorency@schiffhardin.com

Lawrence Katz
LAW OFFICES OF LAWRENCE KATZ
445 Central Avenue, Suite 201
Cedarhurst, NY 11516
516-374-2118
Fax: 516-706-2404
Email: lkatz@lawkatz.com

CERTIFICATE OF SERVICE

I, Daniel A. Edelman, hereby certify that on October 21, 2010, I caused to be filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent electronic notification to the following:

David Elliot Jacoby (djacoby@schiffhardin.com)

Paula J. Morency (pmorency@schiffhardin.com)

Jeannice D. Williams (jdwilliams@schiffhardin.com)

s/ Daniel A. Edelman
Daniel A. Edelman (PHV)